

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 6058-01
Bill No.: SB 862
Subject: Contracts and Contractors; Public Buildings
Type: Original
Date: April 2, 2012

Bill Summary: This proposal modifies the Missouri Public Prompt Payment Act.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Conservation Commission	\$0 to (Unknown greater than \$100,000)	\$0 to (Unknown greater than \$100,000)	\$0 to (Unknown greater than \$100,000)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 to (Unknown greater than \$100,000)	\$0 to (Unknown greater than \$100,000)	\$0 to (Unknown greater than \$100,000)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on FTE	0	0	0

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials at the **City of Columbia, Department of Economic Development, Department of Labor and Industrial Relations, Linn State Technical College, Metropolitan Community College, Missouri Department of Transportation, Missouri Western State University, Northwest Missouri State University, Office of Administration, St. Louis County** and the **University of Central Missouri** assume there is no fiscal impact from this proposal.

Officials at the **Department of Conservation (MDC)** assume a negative fiscal impact from requiring that all contracts get a bond. MDC in the past has had all of the cost of the bonds passed on to them and if that continues in the future, the estimated cost could be \$0 (no projects done) to over \$100,000 (numerous projects done) annually.

Officials at the **University of Missouri** assume this proposal would eliminate retainage from university construction contracts. The elimination of retainage from construction contracts will have a negative effect on the university's ability to enforce completion and manage claims. The University's experience is that sureties may provide payment and performance bonds, however in practice they are in the business of protecting their own interests, not the interests of the owner or university. The University has an exemplary record of prompt payment of its contractors and intervening on behalf of workers and subcontractors who have not been paid promptly. Without retainage we will no longer be able to do this.

Officials at the **Missouri Southern State University** assume the impact can not be determined at this time.

Officials at the **Missouri State University** assume this proposal would prohibit the University from holding retainage on a construction project since the University does require bonds on all our projects. Retainage is held on construction projects in order to assure the University the project is properly executed, completed, and all parties are properly paid. Retainage is one tool the University has in order to get projects completed. Often items remain undone near the end of the project. If retainage was released, the amount of money held may not sufficiently cover the cost to complete the project. The retainage does act as a motivator to a contractor to complete the project. If no retainage were to be held, the contractor would lose all motivation to complete the project. The bond company would be required to step in and complete the project. If this were to be needed, the project completion would be greatly delayed and the University would be strictly dependent upon action by the bonding company.

ASSUMPTION (continued)

Officials at the **City of Kansas City** assume although there is no apparent direct fiscal impact, the increased costs of administering contracts and projects that cannot be closed or that are not finished by contractors could potentially be significant. If the only recourse is to deal with sureties to get full performance, the resulting delay costs could also be significant.

The proposed legislation attempts to replace retainage with bond provisions. Those provisions address the non-payment to subcontractors and suppliers. However, the payment bond does not address the performance issues that the retainage is intended to address. This can leave one less tool available to the City to encourage prompt and proper completion of contracts.

Officials at the **Boone County** assume an unknown impact due to finding a vendor when the first vendor fails to follow through on the contract and in increased costs due to litigation. The impact could be significant.

Officials at the **Clay County** assume an unknown significant impact in getting projects finished on time.

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
CONSERVATION COMMISSION			
<u>Cost - Conservation Commission</u> increased costs due to the requirement that all contracts have a bond	<u>0 to (Unknown</u> <u>greater than</u> <u>\$100,000)</u>	<u>\$0 to (Unknown</u> <u>greater than</u> <u>\$100,000)</u>	<u>\$0 to (Unknown</u> <u>greater than</u> <u>\$100,000)</u>
ESTIMATED NET EFFECT ON CONSERVATION COMMISSION	<u>\$0 to</u> <u>(Unknown</u> <u>greater than</u> <u>\$100,000)</u>	<u>\$0 to</u> <u>(Unknown</u> <u>greater than</u> <u>\$100,000)</u>	<u>\$0 to</u> <u>(Unknown</u> <u>greater than</u> <u>\$100,000)</u>

FISCAL IMPACT - Local Government

FY 2013
(10 Mo.)

FY 2014

FY 2015

LOCAL POLITICAL SUBDIVISIONS

Cost - Local Political Subdivisions

increased costs due to the requirement
that all contracts have a bond

(Unknown)

(Unknown)

(Unknown)

**ESTIMATED NET EFFECT ON
LOCAL POLITICAL SUBDIVISIONS**

(Unknown)

(Unknown)

(Unknown)

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This act modifies the Missouri Public Prompt Payment Act.

Currently, a public owner may retain 5% of the value of a public works contract or up to 10% if it is determined by the public owner and the architect or engineer determine that a higher rate is required to ensure performance. This act repeals these provisions and does not allow retainage if the public owner has obtained a bond. Retainage of up to 5% is allowed by the public owner if the public owner is not required to obtain a bond. Contractors are not allowed to retain amounts owed to subcontractors.

Under current law, retainage may be adjusted prior to completion when work is proceeding satisfactorily and retainage is paid after substantial completion of the contract or per contract terms. In such cases, 200% of the value of the remaining work is withheld until completion. This act repeals this provision.

Under current law, the contractor or subcontractor may withhold certifications to the owner or contractor for payment to the subcontractor or material supplier for many reasons including that the contract cannot be completed for the amount of retainage. This provision is repealed.

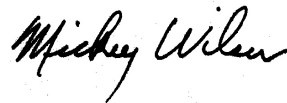
Currently, in contracts which provide for payments to the contractor based upon estimates of materials and work performed rather than certifications, the public owner may retain 5% from the amount due. This act repeals this provision.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

JH:LR:OD

SOURCES OF INFORMATION

Boone County
City of Columbia
City of Kansas City
Clay County
Department of Conservation
Department of Economic Development
Department of Labor and Industrial Relations
Linn State Technical College
Metropolitan Community College
Missouri Department of Transportation
Missouri Southern State University
Missouri State University
Missouri Western State University
Northwest Missouri State University
Office of Administration
St. Louis County
University of Central Missouri
University of Missouri



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